

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1116 of 2014**

- Kumari Snehal Kesharwani, aged about 20 years, D/o Shyam Kesharwani R/o Maruti Hight Aamanaka, Raipur Tahsil and District Raipur C.G.

-----Appellant/ claimant**VERSUS**

1. Dhani Ram Banajare S/o Mani Ram Bandhe, Occupation of Driver R/o Village Dhelkadih, Tahsil and District Rajnandgaon C.G.

-----Driver

2. Maniram S/o Manrakhan Bandhe Occupation of Owner R/o Village Dhamdha Thana Dhamdha Tahsil and District Durg C.G.

----Owner

3. The National Insurance Company Ltd. Branch Office Kamthi Line Rajnandgaon Through Divisional Manager Divisional Office Jel Road Kachehari Chouk Raipur Tahsil and District Raipur

----Respondents

For Appellant	:	Mr. A.L. Singroul, Advocate
For Respondent 3	:	Mr. Goutam Khetrapal, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Parth Prateem Sahu, J.****23/09/2020**

1. Appellant-claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth "Act of 1988") challenging the impugned award dated 26-08-2014 passed in Claim Case no. 188/2012 by 2nd Additional Motor Accident Claims Tribunal, Raipur C.G., whereby learned Claims Tribunal allowed the claim application in part and awarded Rs. 2,47,994/- as compensation in an injury case.
2. Facts of the case are that on 08-04-2012 at about 4:45 P.M., appellant was traveling as pillion rider on Activa-two-wheeler (for short "Activa") of her

friend, and returning to Samta Colony. When they reached near R.K. Mall, G.E. Road, one Tata Ace vehicle bearing Registration No. CG 07C 5627 (henceforth "offending vehicle") dashed the Activa from its back side. In the said accident, appellant suffered grievous injuries over her waist, head and other part of the body. She was admitted to Suyash Hospital and thereafter shifted to Ramkrishna Care Hospital, Raipur. The accident was reported to concerned police station based on which, Crime bearing no. 99/12 was registered against Respondent 1/ Non-applicant 1.

3. Appellant, thereafter, filed an application under Section 166 of the Act of 1988 pleading therein, that she was aged about 20 years and prosecuting her studies in B.Com IIIrd year from Maharaja Agrasen International College, she was also giving computer training to the students and thereby earning Rs. 4,000/- per month. On account of the injuries suffered by her on backbone/ spine and on her head, she became permanently disabled and bedridden, she is unable to prosecute her studies and claimed Rs. 21,00,000/- as compensation.
4. Respondent 1 and 2/ Non-applicant 1 and 2 have filed their reply denying the pleadings made in the claim application. They have denied the accident from their vehicle, respondent 1-driver of the offending vehicle was possessing valid and effective driving licence and the vehicle was insured with Respondent No. 3. The liability of payment of amount of compensation would be upon Respondent 3/ Non-applicant 3-Insurance Company.
5. Respondent 3/ Non-applicant 3-Insurance Company submitted reply to the claim application pleading therein that on the date of accident, Respondent 1/ Non-applicant 1 was not possessing valid and effective driving licence, there was no valid fitness and permit. There was breach of policy conditions. Driver of Activa was not possessing valid and effective driving licence.

6. Learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by the respective parties held that Respondent 1/ Non-applicant 1 while driving his vehicle (offending vehicle) rashly and negligently dashed the appellant-claimant. Breach of policy conditions was found to be proved fastened the liability upon Respondent 1 and 2/ Non-applicant 1 and 2 driver and owner of the offending vehicle for satisfying the award. It was further directed to Respondent 3-Insurance Company to first pay the amount of compensation and thereafter to recover the same from the driver and owner of the offending vehicle i.e. Respondent 1 and 2.

7. Mr. A.L. Singroul, learned counsel for the appellant submits that Claims Tribunal erred in not considering the disability certificate Ext. A-61 showing that the appellant suffered permanent disability to the extent of 30% and proved it by examining Dr. A.A. Saify as AW-2. He further argued that the doctor in his disability certificate has categorically mentioned that on account of injury suffered i.e. Lumber spine region L-1, appellant suffered weakness on her legs, therefore the appellant is entitled for suitable amount of compensation towards loss of income during treatment period and for permanent disability suffered by her. He further argued that the Tribunal erred in awarding only Rs. 5,000/- towards pain and sufferings which is disproportionate to the nature of injury suffered and part of body affected. No amount has been awarded towards loss of amenities in life because looking to the nature of injury suffered by her on her backbone L-1, she may not be in a position to do many of the activities in her life and might have deprived of participating in many competitive examinations. He further argued that learned Claims Tribunal has awarded only Rs. 15,000/- towards the injuries and no amount has been awarded for the attendant. Learned counsel places his reliance on the ruling of **Kajal v. Jagdish Chand and others** reported in **(2020) 4 SCC 413**.

8. Per contra, Mr. Goutam Khetrpal, learned counsel for the Respondent-Insurance Company submits that the claimant has not obtained the disability certificate either from the treating doctor or Medical Board. The doctor who issued the disability certificate is not the member of said Board nor treated the appellant at any point of time. Disability certificate issued by Dr. A.A. Saify cannot be accepted as evidence to prove the disability suffered by the appellant on account of the accidental injuries because Dr. Saify is not a treating doctor nor Member of Medical Board. He next contended that the Tribunal after taking into consideration overall facts and circumstances of the case has awarded just amount of compensation which does not call for any interference.
9. We have heard learned counsel for the respective parties and also perused the record of the claim case.
10. So far as, the first submission made by the learned counsel for the appellant with regard to the permanent disability suffered by her and proved on the basis of the disability certificate Ext. A-61, we have perused the disability certificate issued by Dr. A.A. Saify, Orthopaedic Surgeon, to prove the disability certificate, he was examined as AW-2 before the Claims Tribunal. In his cross-examination, he admitted that he has not operated/ treated the appellant-claimant. He for the first time examined the claimant on 03-03-2013 and disability certificate was issued on 19-03-2013. He admits, that earlier he was a Member of Medical Board but denied the suggestion that he was aware about the issuance of disability certificate by the Board, even then, in collusion, disability certificate was issued by him. For issuance of disability certificate, State constituted the Medical Board consisting of group of doctors in every district. But the appellant has not appeared before the District Medical Board, but obtained the disability certificate from AW-2, who is not the treating doctor and the disability certificate filed is not from the Medical Board. In the above facts of the case, we do not find any error in the

approach of Claims Tribunal of non-consideration of disability certificate. The submission made by the learned counsel for the appellant that the Claims Tribunal erred in not considering the disability certificate and awarding suitable amount on account of permanent disability is not sustainable and it is hereby repelled.

11. Sofar as the 2nd submission made by the learned counsel for the appellant with regard to the award of amount of compensation on different heads and not awarding suitable amount for permanent disability, upon perusal of the impugned award would show that the Claims Tribunal awarded Rs. 2,10,494/- towards medical expenditure, Rs. 7,500/- towards loss of income during the period of treatment, Rs. 10,000/- towards special diet and transportation, Rs. 15,000/- towards injury, Rs. 5,000/- towards pain and sufferings. Learned Claims Tribunal erred in awarding very meagre amount on the heads of injury and mental pain and sufferings, apart from other. In the case at hand, the appellant suffered fracture injury over her spinal lumber region L-1 which is evident from Ext. A-13, discharge summary of Ramkrishna Care hospital, Raipur. She was admitted in hospital from 09-04-2012 to 24-04-2012.
12. Looking to the nature of injury, part of the body and considering that the appellant is female aged about 20 years, we find it appropriate to award Rs. 25,000/- towards injuries suffered by her instead of Rs. 15,000/- and Rs. 25,000/- towards pain and sufferings instead of Rs. 5,000/-. Appellant was admitted in the hospital from the date of accident till 24-04-2012. She might have been discharged from the hospital within 16 days, but looking to the nature of injury and part of body suffered from the injuries, in the opinion of this Court, the appellant might have required attendant for a longer period and, therefore, we find it appropriate to award Rs. 5,000/- towards attendant.
13. Looking to the nature of injury, age of the appellant, part of the body affected,

we also find it appropriate to award a sum of Rs. 25,000/- towards loss of amenities and joy in life. The claimant will also be entitled for Rs. 7,500/- towards loss of income, Rs. 10,000/- towards special diet and conveyance, Rs. 2,10,494/- towards medical expenses which is awarded by the Claims Tribunal to the appellant. Now the appellant-claimant will be entitled for total sum of **Rs. 3,07,994/-** [Rs.2,10,494+ Rs.25,000 + Rs.25,000 + Rs.5,000 + Rs.25,000 + Rs.7,500 + Rs.10,000] as compensation instead of Rs. 2,47,994/- as awarded by the learned Claims Tribunal. The amount of compensation shall carry interest @ 6% p.a. from the date of filing of the claim application till its realization. Other conditions imposed by the Claims Tribunal will remain intact.

14. The Claims Tribunal has held breach of conditions of insurance policy and fastened the liability upon the driver and owner of the offending vehicle and further directed the Insurance Company to first pay the entire amount of compensation and thereafter to recover the same from the driver and owner of the offending vehicle.
15. We affirm the direction issued by the Claims Tribunal of pay and recover to the Insurance Company in the facts and circumstances of the case.
16. As a result, present appeal filed by the claimant is allowed in part and the impugned award is modified to the extent as indicated hereinabove.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge